

Punjab-Haryana High Court

Ramesh Sharma And Anr.

vs

The State Information Commission ...

on 8 February, 2008

Author: M Kumar

Bench: M Kumar, T Mann

JUDGMENT

M.M. Kumar, J.

1. The short question raised in the instant petition is whether a State Information Commission could impose penalty under Section 20(1) of the Right to Information Act, 2005 (for brevity, 'the Act'). The instant petition is directed against order dated 16.10.2007 (P-1) passed by the State Information Commission, Haryana (for brevity, 'the Commission'), imposing a penalty of Rs. 19,250/- by invoking the provisions of Section 20(1) of the Act for 77 delay in furnishing the information in accordance with mandatory provisions of Sub-section (1) of Section 7 of the Act.

2. Brief facts of the case are that applicant-respondent No. 3 made an application dated 16.10.2006 for seeking specified information from the petitioner. However, information was not furnished to the respondent No. 3. On 1.2.2007 only a part of information was given and the supplementary information was made available to him on 14.2.2007. After waiting for some time, applicant-respondent No. 3 had filed an appeal before the Commission on 1.12.2006, who relegated him to file an appeal before the First Appellate Authority prior to approaching the Commission. Accordingly, he filed the first appeal on 2.1.2007 before the Vice-Chancellor of the University with the grievance that he was not supplied the required information. The University had constituted the First Appellate Authority on 2.3.2007 under the Act. Consequently, the applicant-respondent No. 3 approached the Second Appellate Authority again on 20.2.2007. The petitioner filed the reply before the Second Appellate Authority on 23.7.2007' (P-2) raising preliminary objection that applicant-respondent No. 3 should have approached the First Appellate Authority in the first instance, eventually the Commission 'allowed the appeal filed by applicant-respondent No. 3 vide order dated 1.8.2007 and issued direction to the. petitioners to allow applicant-respondent No. 3 to inspect the record. The needful was done by the petitioners as per the direction issued. It was thereafter the Commission issued

a show-cause notice (P-3) to the petitioner, asking the petitioner as to why a penalty @ Rs. 250/- for each day of delay subject to maximum of Rs. 25,000/- in supplying the information be not imposed. The Commission initiated proceeding's under Section 20(1) of the Act. The petitioner filed his reply dated 1.10.2007 (P-4) to the show-cause notice. The Commission after detailed examination recorded the finding imposing penalty on the petitioner, the operative part of the order dated 16.10.2007 reads thus:

After hearing the respondent and perusal of the record, it is held that respondent has not been able to show that he had acted diligently or delay occurred due to reasonable cause. In fact, SPIO has acted in most casual manner in processing the application with the result that there has been a delay of 77 days in furnishing the information. A perusal of the record show that the application was sent by SPIO in original to the concerned branch without any instructions for obtaining the information from them. SPIO took no notice of the fact no information had been sent by the concerned branch till 4.12.2006. Even after the receipt of information on 4.12.2006, it was only on 1.02.2007 that partial information was furnished to the appellant where the information was due to be furnished latest by 16.11.2006 under Sub-section (1) of Section 7 of the Act. Thus, there has been delay of 77 days in furnishing the information. Respondent has not been able to show any reasonable cause for this delay. Therefore, in exercise of powers conferred under Section 20(D of the RTI Act, a penalty of Rs. 19,250/- for 77 days delay in furnishing the information in terms of Sub-section (1) of Section 7 is imposed on the respondent'. He shall deposit the penalty amount in the Commission's head of Account 0070-Administrative Services-60-Other receipts, DDO Code-0049 within 20 days of the receipt of this order under information to the Commission.

Announced. To be communicated.

3. Dr. Balram Gupta, learned Senior Advocate has made three submissions before us. Firstly, he has submitted that Sub-section (2) of Section 20 of the Act would not apply unless findings are recorded that the petitioner has been persistently delaying the supply of information and that too without any reasonable cause. According to learned Counsel, it is not that in every case of delay, penalty could be imposed by placing reliance on Sub-section 2 of Section 20 of the Act. Secondly, he has submitted that the Commission could not have proceeded against the petitioners without firstly training the public authority like the petitioners as envisaged by Section 26 of the Act. According to learned Counsel it was incumbent upon the State Government to train the petitioner by encouraging their participation in the development and organisation of programmes as envisaged by Section 26(1)(a) of

the Act. Learned counsel has insisted that in the absence of any such programmes, having been organised to train the Public Information Officer like the petitioner, the Commission should have taken a lenient view by sparing the petitioner from imposition of such a penalty. Learned counsel has lastly submitted that no second appeal was maintainable without first filing. The first appeal before the authority constituted by the Kurukshetra University.

4. We have thoughtfully considered the respective submissions made by the learned Counsel and are unable to accept the same. It would be appropriate to refer to the provisions of Sub-section (1) of Section 20 of the Act which reads thus:

20(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under Sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred, and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him;

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer, or the State Public Information Officer, as the case may be.

5. A plain reading of Sub-section (1) of Section 20. of the Act makes it obvious that the Commission could impose the penalty for the simple reasons of delay in furnishing the information within the period specified by Sub-section (1) of Section 7 of the Act. According to Sub-section (1) of Section 7 of the Act, a period of 30 days has been provided for furnishing of information. If the information is not furnished within the time specified by Sub-section (1) of Section 7 of the Act then under Sub-section (1) of Section 20 of the Act, public authorities failing in furnishing the requisite information could be penalised. It is true that in cases of intentional delay, the same provision could be invoked but in cases where there is simple delay

the Commission has been clothed with adequate power. Therefore, the first argument that the penalty under Sub-section (1) of Section 20 of the Act could be imposed, only in Cases where there is repeated failure to furnish the information and that too without any reasonable cause, is liable to be rejected. The Commission is empowered under Sub-section (2) of Section 20 of the Act to recommend disciplinary action against such State/Central Public Information Officer under the service rules applicable to such officers. However, the present is not the case of that nature because the Commission has not been invoked under Sub-section (2) of Section 20 of the Act. Hence, the argument raised is wholly misconceived and is hereby rejected.

6. The second submission that lenient view should have been taken on account of failure of the Government to organise any programme to train public authorities as envisaged by Section 26 of the Act is equally without merit. The Act has come in force in the year 2005 and the petitioners were required to constitute the Public Information Officer to the appropriate authorities. The petitioners could constitute the First Appellate Authority only on 2.3.2007, which resulted in filing of second appeal before the Commission. The petitioner has completely ignored the provisions of the Act and appears to have awoken only after the applicant-respondent No. 3 has asked for information and filed the first, appeal. The petitioners cannot avoid the mandatory provisions of Sub-section 1 of Section 20 of the Act on the excuse that any training programme as envisaged by Sub-section (1)(a) of Section 26 of the Act has not been organised by the Government encouraging participation of the petitioners in the development and organisation of programmes. Therefore, we do not find any merit in the second contention raised by the learned Counsel.

7. The last contention that second appeal cannot be filed, does not require any detailed consideration because a perusal of Section 19(3) of the Act shows that after waiting for a period of 90 days, the applicant seeking information is entitled to invoke the power of Second Appellate Authority.

8. It has come on record that applicant-respondent No. 3 had originally filed application for obtaining information on 16.10.2006 before the petitioner. The information was required to be furnished to him within a period of 30 days as per the provisions of Section 7(1) of the Act. The information was not furnished to him and accordingly he filed an appeal before the Commission which was Second Appellate Authority on 1.2.2006 apparently for the reason that the First Appellate Authority was not constituted. However, the Commission relegated the applicant-respondent No. 3 to the First Appellate Authority and the First Appellate Authority could not furnish information within 30 days and consequently he preferred further

appeal. The First Appellate Authority itself was constituted on 2.3.2007 and no first appeal was competent. Moreover, the appeal was filed before the Commission on 20.2.2007 after awaiting period of 30 days from the date of filing the application on 16.10.2006. Even if the period of 90 days is applied which is prescribed for second appeal, the appeal was within limitation.

9. Therefore, the argument raised by the learned Counsel cannot, thus be sustained and the same is also rejected. In view of the above, there is no merit in the instant, petition and the same is hereby dismissed.